DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-145

[redacted]
LCDR

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the applicant's completed application on September 18, 2020, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated June 2, 2023, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a Lieutenant Commander on Extended Active Duty (EAD) with the Coast Guard Reserve, asked the Board to correct his record to show that his son is entitled to the education benefits promised to him in a Certificate of Eligibility letter issued by the Department of Veterans Affairs (VA) on April 24, 2020. According to the applicant, he transferred his Post-9/11 Veterans Education Act of 2008 (Post-9/11 GI Bill)[1] education benefits to his son. The applicant alleged that in 2015 he inquired about transferring his Post-9/11 GI Bill benefits to his children and was told that he would need to obligate another 4 years of service to be eligible to transfer his benefits to his son. The applicant further alleged that he was assured by a personnel officer that he had correctly completed the necessary paperwork and that his eligibility to make the transfer was confirmed. As a result of these assurances, the applicant stated, he signed a contract to remain in the Coast Guard for another 4 years, and he honorably completed his obligation in May 2020.

The applicant claimed that his son was later accepted to a college that approved his GI Bill benefits, and VA issued the applicant's son a Certificate of Eligibility that was provided to

[1] The Post-9/11 GI Bill provides financial support for education and housing to individuals with at least 90 days of aggregate service after September 10, 2001, or individuals discharged with a service-connected disability after 30 days. An individual must have received an honorable discharge to be eligible for the Post-9/11 GI Bill, http://GIbill.va.gov/benefits/post_911_GIbill/index.html (last visited on April 12, 2023).

the university. The applicant alleged that his son was offered several scholarships at other colleges, including a full tuition scholarship, but declined those offers based on the Certificate of Eligibility his son received from VA. However, the applicant stated, VA subsequently removed all of the previously promised eligibility except 15 full time days of attendance. The applicant claimed that this was because the military did not properly evaluate his application for benefits. The applicant explained that he used a non-GI Bill education benefit in the 1990s that reduced his son's eligibility from 4 years to just 15 days. The applicant stated that the Coast Guard should have notified him back in 2016—when he first applied for the benefits transfer—of his limited eligibility had they just properly verified his eligibility. The applicant claimed that he would never have signed on for an additional 4 years of obligated service, but for the opportunity for his son to get his education benefits.

The applicant explained that the revocation of these promised benefits will cause significant financial hardship to him and his family. The applicant alleged that he was explicitly told in writing, by both the Coast Guard and VA, that his son unquestionably qualified to receive these benefits. The applicant stated that his son worked very hard to get into college, and that his family planned their finances around his son's ability to use the education benefits promised by the Post-9/11 GI Bill—a benefit the applicant argued he rightfully earned. The applicant further stated that had his family known it would not receive these educational benefits, they would have made other financial plans for his son's college. The applicant explained that after contacting his local Congressman, he learned that he was not alone in this fight to get the education benefits promised. According to the applicant, the United States military does not maintain proper documentation and fails to do proper evaluations of applications for benefits. The applicant stated that he initially believed this was entirely VA's error, but after an investigation by his Congressman's office, it was determined that the Coast Guard was at fault for not properly processing the initial application to have the benefits transferred. The applicant alleged that the Coast Guard erroneously told him that he qualified to transfer his benefits in order to get him to obligate additional service. The applicant argued that this entire situation is grossly unjust and should be remedied.

SUMMARY OF THE RECORD

Before entering the Coast Guard Reserve, the applicant served as an enlisted member in the Army Reserve and Navy Reserve in the 1980s and 1990s. His record contains a transcript showing that he attended a university and earned a degree as a certified physician's assistant in August 2000. Then from June 2006 through June 2009, the applicant served as an officer of the U.S. Public Health Service.

On June 30, 2009, the applicant was commissioned a lieutenant in the Coast Guard Reserve.

On May 10, 2016, the applicant signed a CG-3307 ("Page 7") for Separation (SEP-22) SELSRES Obligated Service for the Post-9/11 GI Bill, wherein the applicant agreed to serve an additional 4 years in either the Selected Reserve or on active duty in order to transfer his unused educational benefits to his son. The text of this Page 7 appears as follows and each numbered part is initialed by the applicant:

I, [name redacted], agree to obligate additional service to meet the requirements of the Post-9/11 GI Bill allowing the transfer of my education benefits to my dependents. (Read and initial below.)

1. ____ I understand that the determination of remaining benefits is made by the Department of Veterans Affairs.
2. ____ I understand that I must have 6 years in the Armed Forces (Selected Reserve and/or Active Duty) to transfer benefits. My spouse may use benefits immediately and children may use benefits after I have served 10 years in the Armed Forces.
3. ____ I agree to remain in the Armed Forces (Selected Reserve and/or Active Duty) for four years from the date of my Transfer of Education Benefits (TEB) web application and that this time runs concurrent with any other contract or agreement.
4. ____ I understand that if Service policy or statute does not allow me to complete my obligated service, I agree to serve the maximum amount of time allowed by such policy or statute.
5. ____ I understand this agreement does not obligate the military service to retain me in the Selected Reserve or on Active Duty.
6. ____ I understand that failure to complete this service agreement after transferring entitlement may result in an overpayment of educational assistance [that] is subject to collection by the Department of Veterans Affairs.

On April 24, 2020, the applicant's son received a Certificate of Eligibility from VA informing him that he was entitled to 34 months and 0 days of full-time benefits. The letter further informed the applicant's son that he was entitled to receive 100% of the benefits payable under the Post-9/11 GI Bill program.

On April 24, 2020, VA issued a subsequent letter to the applicant, informing him that they made "necessary" adjustments to his son's allocated benefits. The letter explained that although the applicant had requested to transfer 36 months of Post-9/11 GI Bill benefits to his three children, the applicant had already used a total of 47 months and 13 days of his education benefits under the Montgomery GI Bill – Selective Reserve and Vocational Rehabilitation & Employment. The letter from VA further explained that because the law only allows a total of 48 months of combined education benefits, his children were only entitled to a total of 17 days of full-time benefits under the Post-9/11 GI Bill.

On June 3, 2020, the applicant appealed the VA's decision, but his appeal was denied.

APPLICABLE LAW AND POLICY

Directive Type Memorandum (DTM) 09-003, June 22, 2009

On June 22, 2009, Department of Defense (DoD) set forth the policies and procedures for carrying out the Post-9/11 GI Bill in DTM 09-003. The DTM states that it is effective immediately and is applicable to the Office of the Secretary of Defense and the Military Departments including the Coast Guard by agreement with the Department of Homeland Security. It states that the effective date of the Post-9/11 GI Bill is August 1, 2009. The DTM defines "Military Services" as the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Paragraph 3 of Attachment 2 (Procedures) to the DTM states the following about transferring educational benefits to dependents:

> **TRANSFERABILITY OF UNUSED EDUCATION BENEFITS TO FAMILY MEMBERS**. Subject to the provisions of this attachment, the Secretary of the Military Department concerned, to promote recruitment and retention of members of the Armed Forces, may permit an individual described in paragraph 3.a. of this attachment, who is entitled to educational assistance under the Post-9/11 GI Bill, to elect to transfer to one or more of the family members specified, all or a portion of such individual's entitlement to such assistance.
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> a. Eligible Individuals. Any member of the Armed Forces on or after August 1, 2009, who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, is eligible for the Post-9/11 GI Bill, and
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> > (1) Has at least 6 years of service in the Armed Forces (active duty and/or Selected Reserve) on the date of election and agrees to serve 4 additional years in the Armed Forces from the date of election, or …

Paragraph 3.g.(1) of Attachment 2 (Time of Transfer) states that an individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement to the individual's family member only while serving as a member of the Armed Forces. The DTM's glossary defines "member of the Armed Forces" as a member serving on active duty or in the Selected Reserve and expressly excludes retired members.

VIEWS OF THE COAST GUARD

On March 21, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion and adopted the findings and analysis in a memorandum submitted by the Commander, Personnel Service Center (PSC). The JAG argued that the applicant's request for additional GI Bill educational benefits was administratively reviewed, and after the review, the Coast Guard recommended denying relief in this case. According to the JAG, by statutory design, the GI Bill educational benefits program is administered by VA's Veterans Benefits Administration. The JAG explained that the Coast Guard assists servicemembers in applying for these benefits, but has no role and, as a matter of practice, "no window" into each member's utilization and communication with VA. The JAG further explained that the Defense Manpower Data Center (DMDC) is an interagency database managed by DoD that provides a snapshot of a member's eligibility, but it is in no way authoritative when compared to VA's own accounting system. The JAG argued that the applicant acknowledged the lead role of VA in determining educational benefits when he applied for SELRES obligated service on May 10, 2016. Finally, the JAG argued that the applicant has requested benefits in excess of those afforded by statute and the applicant initialed and signed "I understand that the determination of remaining benefits is made by the Department of Veterans Affairs."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 22, 2021, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. As of the date of this decision, no response has been received.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) to the extent that the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board does not have jurisdiction over any claim based on alleged error or injustice in a VA record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.[2]

3. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

4. The applicant alleged that his ability to transfer only 17 days' worth of education benefits to his dependent is erroneous and unjust because he was advised he was eligible to transfer his education benefits and he served four additional years to be able to do so. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.[3] Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."[4]

5. The Board's review of the applicant's records shows that in 2016, the applicant applied to transfer his unused Post-9/11 education benefits to his children, and the Coast Guard approved the application. The Page 7 he signed shows that he agreed to continue serving another four years, either in the Selected Reserve or on active duty, to be eligible to transfer his education benefits and that VA would determine what his "remaining benefits" were. The applicant has failed to prove, by a preponderance of the evidence, that these Coast Guard records contain any error or injustice.

6. The record further shows that when the applicant completed the four years of service in 2020, VA sent his son a Certificate of Eligibility on April 24, 2020, indicating that the applicant had transferred 34 months of remaining benefits to his son, but VA subsequently issued

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[2] *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

[3] 33 C.F.R. § 52.24(b).

[4] *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

the applicant another letter informing him that because he had already used most of his education benefits under the Montgomery GI Bill – Select Reserve and Vocational Rehabilitation program, the original letter was incorrect because the applicant only had 17 days of remaining unused benefits to transfer to his dependents. The Board does not have jurisdiction over these claims, however, because these are not Coast Guard records.

7. The applicant argued that this error could have been prevented had the Coast Guard exercised due diligence. However, as argued by the Coast Guard, the veterans' education benefits programs are run by VA, not by the Coast Guard. In approving his application to transfer his benefits, the Coast Guard was only responsible for determining that he was eligible to do so because he had sufficient years of service. The Coast Guard was not responsible for determining how many remaining months and days of unused benefits he had left to transfer to his dependents. The Page 7 that the applicant signed expressly states that VA had the authority to determine his remaining benefits. In addition, the applicant's transcripts indicate that he must have used his education benefits to receive his degree as a member of the Navy in the 1990s and 2000—nine years before he joined the Coast Guard Reserve. In fact, aside from VA, the applicant himself was best placed to know that he had already used most of his education benefits to get his degree and so had almost no remaining benefits to transfer. And he has not explained why he thought he had years of remaining education benefits to transfer to his dependents even after using nearly four years' worth to get his degree.

8. The record shows that the Coast Guard's program manager accurately informed the applicant that he was eligible to transfer his remaining education benefits to his dependents upon completion of another four years of obligated service, which the applicant completed in May 2020. The applicant has failed to prove that the Coast Guard promised that he had any specific amount of remaining benefits that could be transferred to his dependents. His application to transfer his remaining benefits was approved as promised by the Coast Guard, but the Coast Guard would not have known how many of his education benefits he had already used before joining the Coast Guard and was not responsible for tracking his use of education benefits or the remaining total available for transfer. That responsibility lies with VA, and this Board has no authority over VA.

9. The Board recognizes the hardship and disappointment this situation has caused for the applicant and his son, but education benefits are tracked and administered by VA, and this Board has no authority to correct VA records. Simply put, there is no Coast Guard record that this Board could correct that would result in the applicant having more education benefits to transfer to his son. As VA stated, education benefits are capped at 48 months, and this Board has no authority to change that limit or to order VA to provide the applicant with double the allowed amount of education benefits so that he can transfer more benefits to his son. And although the applicant alleged that an investigation by his Congressman's office determined that the Coast Guard was at fault for failing to properly process his application to have the benefits transferred, he has failed to provide any evidence supporting that allegation. Moreover, the number of education benefits available for transfer is not a result of an improperly processed application but of the number of months of education benefits that the applicant had already used. Therefore, the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard

committed an error or injustice in processing the applicant's request to transfer his unused education benefits to his dependents.

10. The applicant has not shown that the Coast Guard erroneously promised him that his dependents would receive a certain amount of education benefits in exchange for promising four more years of service. Accordingly, the applicant's request should be denied.

ORDER

The application of LCDR [redacted] USCG Reserve, for correction of his military record is denied.

June 2, 2023

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